
HOUSE BILL 3089

State of Washington 60th Legislature 2008 Regular Session

By Representatives Miloscia, VanDeWege, and Simpson

Read first time 01/22/08. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to occupational diseases affecting public employee
2 fire investigators; and amending RCW 51.32.185.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 51.32.185 and 2007 c 490 s 2 are each amended to read
5 as follows:

6 (1)(a) In the case of the following, there shall exist a prima
7 facie presumption as provided in (b) of this subsection:

8 (i) Firefighters as defined in RCW 41.26.030(4) (a), (b), and (c)
9 who are covered under Title 51 RCW (~~and~~);

10 (ii) Firefighters, including supervisors, employed on a full-time,
11 fully compensated basis as a firefighter of a private sector employer's
12 fire department that includes over fifty such firefighters(~~(7)~~); and

13 (iii) Public employee fire investigators.

14 (b) There shall exist a prima facie presumption for those
15 occupations listed in (a) of this subsection that: (~~(a)~~) (i)

16 Respiratory disease; (~~(b)~~) (ii) any heart problems, experienced
17 within seventy-two hours of exposure to smoke, fumes, or toxic
18 substances, or experienced within twenty-four hours of strenuous
19 physical exertion due to firefighting activities; (~~(e)~~) (iii) cancer;

1 and ~~((d))~~ (iv) infectious diseases are occupational diseases under
2 RCW 51.08.140. This presumption of occupational disease may be
3 rebutted by a preponderance of the evidence. Such evidence may
4 include, but is not limited to, use of tobacco products, physical
5 fitness and weight, lifestyle, hereditary factors, and exposure from
6 other employment or nonemployment activities.

7 (2) The presumptions established in subsection (1)(b) of this
8 section shall be extended to an applicable member following termination
9 of service for a period of three calendar months for each year of
10 requisite service, but may not extend more than sixty months following
11 the last date of employment.

12 (3) The presumption established in subsection (1)~~((e))~~ (b)(iii)
13 of this section shall only apply to any active or former firefighter or
14 fire investigator who has cancer that develops or manifests itself
15 after the firefighter or fire investigator has served at least ten
16 years and who was given a qualifying medical examination upon becoming
17 a firefighter or fire investigator that showed no evidence of cancer.
18 The presumption within subsection (1)~~((e))~~ (b)(iii) of this section
19 shall only apply to prostate cancer diagnosed prior to the age of
20 fifty, primary brain cancer, malignant melanoma, leukemia, non-
21 Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer,
22 multiple myeloma, testicular cancer, and kidney cancer.

23 (4) The presumption established in subsection (1)~~((d))~~ (b)(iv) of
24 this section shall be extended to any firefighter or fire investigator
25 who has contracted any of the following infectious diseases: Human
26 immunodeficiency virus/acquired immunodeficiency syndrome, all strains
27 of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

28 (5) Beginning July 1, 2003, this section does not apply to a
29 firefighter or fire investigator who develops a heart or lung condition
30 and who is a regular user of tobacco products or who has a history of
31 tobacco use. The department, using existing medical research, shall
32 define in rule the extent of tobacco use that shall exclude a
33 firefighter or fire investigator from the provisions of this section.

34 (6) For purposes of this section, "firefighting activities" means
35 fire suppression, fire prevention, fire investigation, emergency
36 medical services, rescue operations, hazardous materials response,
37 aircraft rescue, and training and other assigned duties related to
38 emergency response.

1 (7)(a) When a determination involving the presumption established
2 in this section is appealed to the board of industrial insurance
3 appeals and the final decision allows the claim for benefits, the board
4 of industrial insurance appeals shall order that all reasonable costs
5 of the appeal, including attorney fees and witness fees, be paid to the
6 firefighter or fire investigator, or his or her beneficiary, by the
7 opposing party.

8 (b) When a determination involving the presumption established in
9 this section is appealed to any court and the final decision allows the
10 claim for benefits, the court shall order that all reasonable costs of
11 the appeal, including attorney fees and witness fees, be paid to the
12 firefighter or fire investigator, or his or her beneficiary, by the
13 opposing party.

14 (c) When reasonable costs of the appeal must be paid by the
15 department under this section in a state fund case, the costs shall be
16 paid from the accident fund and charged to the costs of the claim.

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